

ENVIRONMENTAL QUALITY COUNCIL MEETING MINUTES
SEPTEMBER 30, 1994

A meeting of the Environmental Quality Council was held on Friday, September 30, 1994, beginning at 8:30 a.m. in Room 312-2 of the State Capitol. The morning session was convened jointly with the Legislative Audit Committee. The EQC section of the meeting was called to order by Chairman JERRY NOBLE. Members present were REP. VICKI COCCHIARELLA, SENATOR STEVE DOHERTY, SENATOR LORENTS GROSFIELD, SENATOR JOHN HERTEL, REP. DICK KNOX, REP. SCOTT ORR, GREG TOLLEFSON, and SENATOR JEFF WELDON. Excused were REP. JODY BIRD, BOB BOEH, and JEANNE-MARIE SOUVIGNEY. GLENN MARX, the Governor's representative, was present. EQC staff attending were DEBORAH SCHMIDT, PAUL SIHLER, MICHAEL KAKUK, TODD EVERTS, and ELLEN ENGSTEDT.

Members present from the Legislative Audit Committee were SENATOR JERRY DEVLIN, SENATOR EVE FRANKLIN, SENATOR GREG JERGESON, SENATOR TOM KEATING, REP. JOHN COBB, REP. ERNEST BERGSAGEL, REP. LINDA NELSON, and REP. ROBERT PAVLOVICH.

The minutes from the morning session are attached as "Minutes of the Joint EQC-OLA Session". The performance audit was dated September 1994 and entitled Enforcement of the Water Quality and the Public Water Supply Acts.

The EQC reconvened at 1:30 p.m. in Room 437.

MR. NOBLE introduced SENATOR HERTEL who has been appointed to the Council to replace Senator Rye who has resigned.

The minutes of the previous meeting were approved.

Enforcement Subcommittee Report

SENATOR GROSFIELD said the subcommittee had met the previous afternoon and discussed the general area of enforcement and compliance. He indicated the meeting had been informal and productive. Since the last EQC meeting staff has conducted a survey of various agencies involved in environmental and natural resource programs. SENATOR GROSFIELD used Exhibit 1, the enforcement/compliance survey results.

SENATOR GROSFIELD said the subcommittee spent a considerable amount of time on the terminology of compliance and enforcement. The terms are interchangeable and are often confused. He said there is more to the issues than determining there is a violation and assessing a penalty. There should be effort spent to help ensure compliance through education and training.

The recommendations from the subcommittee to the Council are contained in Exhibit 2. Some of the issues that had been raised during the morning session on the water quality audit were the same ones the subcommittee had discussed at its meeting. He said there is a concern about lack of public confidence in the system as it now operates. There is a question as to whether an employee should be involved in issuing a permit and also be in the role of regulator at a later time, if necessary. There are questions regarding who should be responsible for decisionmaking and whether field personnel should have that authority or whether decisions should be made by administrators or even the governor.

Discussions were also held on whether it is appropriate for the state to maintain the regulatory functions or would the state be at an advantage to turn over some programs to the EPA for enforcement or compliance.

SENATOR GROSFIELD said the subcommittee did recommend that the Council proceed in some way with the general issues of enforcement and compliance and that the Council decide how far it wished to go.

MR. NOBLE said the recommendation directed to the EQC in the Legislative Audit report on water quality does recommend that the EQC study the enforcement questions raised by the audit. MR. NOBLE asked if there is a specific timeframe that needs to be followed for this study.

ANGIE GROVE, legislative audit staff, said her office will be doing follow-up work during the legislative session, but it is the Council's decision as to when and how much it wants to do.

SENATOR GROSFIELD said the feeling from the subcommittee was that it would be a study project for the next interim because of lack of time before the session begins in January.

MR. NOBLE said it appeared part of the problem has been that the issues had been addressed in bits and pieces in the past and it should be studied in a comprehensive manner this time. He said the Council could recommend to the next Council that these issues be studied or a study resolution from the EQC could be prepared for the 1995 Legislature to recommend the EQC undertake this study. Any recommendation from the current Council to future councils could be ignored, but a study resolution would ensure that the study would be done.

REP. KNOX said a project of this magnitude should have a mandate from the Legislature and it would be appropriate for the EQC to propose it.

MS. SCHMIDT said in her response to the recommendation in the audit she suggested that the broader issues of enforcement

would be addressed and not only as the issues relate to water quality.

SENATOR DOHERTY agreed with REP. KNOX that the project would be large with questions dealing with fundamental governmental issues. He felt the idea of a study resolution made good sense so a full interim could be devoted to the issues. However, he said there are some issues that are facing the Council and the state right now and those issues need to be dealt with.

SENATOR GROSFIELD asked if SENATOR DOHERTY was referring to Recommendation #11 that recommends "the EQC review the current water quality statutes to ensure consistency and continuity and recommend any necessary changes."

SENATOR DOHERTY said he was in favor of the Council's acceptance of that recommendation, but also felt the discussions the Council has had regarding the tools for enforcement that range from incentives, education, training, and other means of ensuring compliance should be considered before the 1995 Legislature meets.

SENATOR GROSFIELD said the audit referred to inconsistencies and lack of continuity, but did not state specific statutes. He questioned whether there are many inconsistencies or if there are a few small issues that would be fairly easy to address.

MS. GROVE said there are some areas of concern in the report that could be addressed through rulemaking. Some areas that are more complicated are funds and accounts that are available for environmental damage and remediation and could require more in-depth study. There is a range of issues and the audit left the parameters up to the Council for its consideration.

MS. GROVE said some of the concerns have been expressed to the Department of Health and Environmental Sciences and recommendations made to them for legislative action, if needed. Director Robinson, in his response to the audit, stated DHES would have legislation in some of those areas to correct any deficiencies.

SENATOR GROSFIELD asked if it is usual for a legislative agency such as the EQC to become involved after a performance audit by the Legislative Auditor on programs located in an executive branch agency. MS. GROVE said usually the recommendations are directed to the executive branch agency or, in some cases, to the Governor's office. If the agency does not respond with legislation the Audit Committee feels is appropriate, sometimes members of the Audit Committee will propose the legislation.

SENATOR GROSFIELD said he personally felt hesitant to get into the DHES responses to the audit report before the 1995 session starts. He felt the Council should think about how involved it should be before the agency has a chance to correct or address some of the concerns in the audit.

MR. NOBLE asked if the DHES is going to address at least some of the concerns expressed in the audit report prior to the legislative session.

CURT CHISHOLM, representing DHES, said the department intends to seek some of the legislative clarifications pointed out in the audit. However, from the department's perspective, it would be beneficial if the EQC would look at some of the inconsistencies in each of the agency's responses. In answer to a question from the morning session as to whether the DHES needs more enforcement tools, MR. CHISHOLM said more tools are not needed, but clarification of legislative intent in existing laws would be very beneficial to the agency.

SENATOR WELDON said there is a short timeline before the 1995 Legislature to develop anything meaningful. However, if there are statutory problems and they are not addressed now, it will be three years before anything could be passed and placed in statute. If there is anything the EQC can do over the next three months, an attempt should be made to do it.

SENATOR GROSFIELD suggested staff do some preliminary scoping on what might be done fairly quickly and addressed by the Council at its next meeting. There could also be something that could be done by the enforcement subcommittee.

MR. NOBLE asked if staff felt there was anything that could be accomplished with the short timing. MR. KAKUK responded that with EQC staff working closely with DHES Water Quality staff it would be possible to identify concerns that could be addressed immediately and identify those issues that need more time.

REP. COCCHIARELLA MOVED that the EQC recommend a study resolution relating to enforcement issues and that the resolution be directed to the EQC. The motion PASSED unanimously with those present.

It was agreed that staff was instructed to meet with personnel from the DHES to identify possible areas in need of clarification prior to a meeting of the enforcement subcommittee.

Under public comment, ANDREA STANDER, Northern Plains Resource Council, said she felt a sense of urgency about changes that need to be made in light of the audit report. She also said all of the groups, including the department, EQC, and the Audit

Committee, need to work together so issues are not being addressed in isolation and to prevent duplication.

HAZARDOUS WASTE STUDY WORKING GROUP RECOMMENDATIONS

MR. NOBLE said the working group had 13 meetings with a varied membership and produced some recommendations for the full Council to examine.

MR. SIHLER said the group had agreed at the beginning of the study that any recommendations to be presented to the Council would be by consensus of the full working group. MR. SIHLER used Exhibit 3 to present those recommendations.

MR. NOBLE said the EQC members of the Hazardous Waste Working Group had decided to postpone a seminar relating to the issues of hazardous waste until during the first two weeks of the legislative session and combine it with a briefing with natural resources issues. It is hoped more legislators would have time to attend this kind of briefing.

ANNE HEDGES, MEIC, said Recommendation 5(c) contains the wording "include incentives for the proper elimination of hazardous waste...". MS. HEDGES said she did not agree to that wording at the meeting of the working group.

SARAH BARNARD said she was bothered by the term "eliminate" and wanted the sentence to read "incentives for the purchase of equipment to reduce or reuse hazardous waste." She said the discussion was whether the intent was to mean "to dispose" and she did not feel that was the intent.

TOM DAUBERT said he did seem to recall that was true because the use of both would be redundant.

REP. COCCHIARELLA said it was important for the Council to understand that the working group struggled with the issues in much the same manner as the Legislature had during the last session. However, there was a great deal of communication among the members and a lot of valuable information was gathered and shared. While the recommendations do not solve the problems of hazardous waste burning and disposal in Montana, the information was valuable and could be used in future debates on the issue.

REP. COCCHIARELLA MOVED that the information covered by the Hazardous Waste Working Group be provided to the Legislature in the form of a report.

MR. NOBLE agreed that a study report to be presented to the Legislature for information would be helpful.

MR. SIHLER said it is a normal procedure for study resolutions requested through the Legislature that the committee conducting the study make a report in writing to the next Legislature. All of the EQC study reports have had a basic framework of issue, background information on the issue, options considered, and recommendations.

MR. SIHLER said he had been receiving questions from various individuals regarding a report and when it might be ready. He used Exhibit 4 to detail a possible outline for a final report on the study resolution. He said the working group had decided it would not be able to agree on what should or should not be in a final report and wanted only to submit to the Council the recommendations previously discussed.

MR. SIHLER said the question for the Council is whether it wants to do a study report and if so, is the outline appropriate for the framework.

REP. KNOX said MR. SIHLER was correct in that the working group could not agree as to whether the EQC should issue a report. He said the Council should know that there was sharp disagreement over whether the report and the minutes would somehow constitute a certain degree of bias toward one opinion on a certain issue. REP. KNOX said he did not agree that a report coming from the working group and the EQC staff would reflect any bias. He said the hazardous waste issue will undoubtedly be before the next Legislature and the Council would be remiss if it did not issue a report.

Further, REP. KNOX said as an individual who sat through most of the working group meetings, he did not, in his opinion, find any evidence that the reporting through the minutes or any other way showed any bias toward one side of the issue or the other. He supported the motion to produce a report.

MR. NOBLE said the EQC subcommittee members will receive a copy of the report in draft form prior to final publishing for review.

The motion PASSED.

MR. DAUBERT said his recollection of the last working group was that a report should include the Council's compilation of all of the information and not the working group's because they could not agree on the interpretations of the variety of issues. He said there is good information and it should be in report form.

MR. SIHLER said one of the recommendations from the working group asked that the Council take specific action relating to the MSU Extension Service's funding.

MIKE VOGEL, MSU Extension Service, said there is a pollution prevention program that is funded and has been funded for the last two years by the EPA. The major focus of the program is prevention of the generation of waste through waste minimization with the Extension Service's focus on small business. They work with businesses and state agencies to provide them with training, technical assistance, and educational opportunities. The approach is strictly through education and not regulatory action. MR. VOGEL felt the program has provided a valuable service through outreach and it should continue, but the funding will expire the end of next year.

The average funding for the program is \$87,000 per year and the Extension Service proposed that the EQC help secure funding for 50 percent of that amount.

MR. NOBLE said the recommendation from the working group was that the EQC should consider sponsoring a proposal to help fund the MSU Extension Service pollution prevention program.

MR. NOBLE suggested the Council wait with any formal action until the final report is available. The Council agreed.

GROUND WATER ASSESSMENT ACCOUNT FUNDING DEFICIENCY UPDATE

MR. EVERTS referred to nine letters (Exhibit 5) dealing with the concern over the ground water assessment account funding problem. The Council had instructed staff to write a letter of concern to the Governor and that was done on July 13. Other committees that became involved in the problem are Revenue Oversight, Water Policy, and Legislative Finance. The Governor has instructed the Department of Natural Resources to prepare corrective legislation for the next session.

MR. MARX said the emergency funding mechanism has been activated and the problem handled for now with legislation to be proposed to prevent a recurrence of the funding deficiency.

TRANSPORTATION ENERGY EFFICIENCY UPDATE

MR. NOBLE said the meetings with the parties interested in the transportation energy efficiency plan have been well attended. The committee decided to focus on the issue of alternative fuels because of its importance to Montana. If there is time remaining, the group will take up transportation demand management and least cost planning.

MEPA IMPLEMENTATION UPDATE

MR. EVERTS said since the last EQC meeting in June five training sessions have been conducted at DNRC in terms of MEPA training with 98 people attending. DNRC field staff will also be

trained in the future. At this time, MR. EVERTS said 513 state people have received the MEPA training.

There will be a private attorney CLE to be held in late October. Attenders will receive seven credits for \$20.

MR. EVERTS said the opinion on the Golden Sunlight case has been received and some important MEPA issues are discussed in this opinion. Staff could provide a summary to the Council if needed. The Council requested such a briefing.

MR. NOBLE suggested to SENATOR HERTEL that he attend a MEPA training session if possible or at least spend some time with MR. EVERTS discussing the Montana Environmental Policy Act. SENATOR HERTEL agreed.

PROPOSAL TO REORGANIZE NATURAL RESOURCE AGENCIES

SENATOR WELDON said a task force has been established by the Governor to examine reforming government. The task force has been meeting since January and has been looking at a very broad spectrum of government/school entities. SENATOR WELDON used Exhibit 6 for his explanation.

The task force looked at the natural resource functions in an attempt to reorganize them with the principle that the state's function in regulation should be distinct from the state's function in natural resource management. The agencies have been divided into the Department of Environmental Quality and the Department of Natural Resource Management.

The plan has been distributed statewide with public hearings and meetings and the final recommendations will be ready the end of October. SENATOR WELDON said the final recommendations will probably not be different from the draft he used. He felt the Governor will also endorse this recommendation and legislation will be drafted.

SENATOR WELDON said there are some problems with the proposal. Forestry functions have been scattered and would become less effective. The same could be true of water rights by functions being placed in two different places.

The problem with the bill drafting will be in how to make the changes practically work. The bill draft request has been assigned to the EQC.

REP. COCCHIARELLA said it was evident by the meeting earlier on the water quality audit that there is a problem with communication among agencies. She felt it was because of the way agencies are forced to budget. She asked if the task force discussed at all the foundation of what is happening to state

government. She said reforms are meaningless unless the basic problems are addressed first.

SENATOR WELDON said some of the problems would be addressed by combining some of the programs into one agency. However, the root problem of budgetary competition and lack of communication was not addressed. The Governor's charge to the task force was very broad and the approach was directed toward structural changes that could be taken in a relatively short period of time.

REP. COCCHIARELLA said if the basic problems are not addressed, the restructuring appears to be just change for change sake.

SENATOR WELDON said in the natural resource agency reorganization regulation functions should be taken care of by one department and management should be done in a different agency. In this section at least, there was a definite attempt to coordinate the duties once the decisions were made on which entity did what.

SENATOR DOHERTY asked where enforcement would be placed. The answer was the Department of Environmental Quality.

SENATOR DOHERTY said the problem would still arise of the same people writing the permits and then providing enforcement, if needed. He said perhaps enforcement should be a unit all by itself, away from the other sections.

SENATOR WELDON said within the Department of Environmental Quality there is a division called Compliance and Inspection that would be responsible for compliance.

SENATOR WELDON said because of complaints that it takes too many steps at too many places, there was an effort to centralize and coordinate.

SENATOR WELDON said he would like for the Council to review drafts of the legislation as they are available so something is not produced that is fatally flawed.

ADMINISTRATIVE MATTERS

FY 96-97 Budget

MS. SCHMIDT said the Council is the approving authority for the Environmental Quality Council budget (Exhibit 7). The EQC budget is completely supported by general fund. The Water Policy Committee budget, staffed by the EQC, is supported by Resource Indemnity Trust interest funds.

There are two areas with significant changes, salaries and rent. There are 5.5 FTE of EQC staff and .75 FTE for legislators serving on the EQC and .25 FTE serving on Water Policy. There has been no growth of any significance in legislative staff for the past 14 years.

MS. SCHMIDT proposed an increase of \$10,000 in staff salaries each year for the next two years. Legislative agency directors have been meeting with the chairs of the agencies to attempt to develop a uniform pay plan for the legislative branch. There is hope that the proposed plan would be ready for the 1995 session.

The review of current salaries in anticipation of developing the pay plan shows the EQC staff attorneys and researchers are paid considerably less than their counterparts in the other legislative agencies. The proposed increase of \$10,000 in the EQC budget would be directed at the three research/attorney positions and the half-time office assistant position. The percentage increase in personal services is about six percent.

MS. SCHMIDT said approval of the increases would be the minimal amount that would be necessary to acquire some equity within the agencies.

There are no significant changes in the other categories within the budget except rent. The Department of Administration has assessed rent to the EQC this biennium where the agency did not pay rent in the past.

SENATOR WELDON said at a past meeting the Council had discussed staff travel and the importance of staff travelling to professional meetings to enhance their knowledge.

MS. SCHMIDT said the travel category as it relates to staff only means expenses paid for staff to travel to Council meetings. However, since the previous discussion by the Council, it was decided that each staff member could be allowed \$150 per year to be used for education and training.

SENATOR WELDON said if staff is travelling to improve their knowledge which in turns benefits the Council, \$150 is not enough.

MR. NOBLE asked if Council members feel comfortable with the increased budget. He said it is a very frugal budget and commended staff for staying within it.

REP. COCCHIARELLA MOVED that the proposed budget be adopted.

REP. COCCHIARELLA said the State of Montana is recognized nationally for its Radon Control Act. While that recognition

should go to the citizens who raised the issue and the Legislature for passage of legislation, she felt MR. EVERTS deserved much of the credit for this Act.

REP. COCCHIARELLA did not feel these increases were enough and that the EQC staff works much more than they are paid. There is the risk that these staffers would go to larger agencies that could offer better salaries because of flexibility in their budgets.

SENATOR WELDON said he did not want to condemn passage of the budget by increasing it even more, but felt there should be an increase in funding so staff can participate in other activities that require travel.

SENATOR GROSFIELD asked if this increase gets the salaries into the range of other legislative staff. MS. SCHMIDT said the increase raises the staff to the bottom level of the range instead of below the range.

SENATOR GROSFIELD asked how wide the range is. MS. SCHMIDT said some attorneys in the legislative branch are paid \$56,000 plus. This is the first time the directors have met and tried to figure out ways to provide equity among the positions.

There is a proposal to give state employees a 2.5 percent pay raise, but it would have to be funded through vacancy savings in the agency. The problem with small agencies is that there is very little vacancy savings and in order to give employees a raise, someone would probably have to be removed.

REP. COCCHIARELLA asked what has happened to the EQC budget proposals in the past sessions. MS. SCHMIDT said the budget has gone down including the loss of a .5 FTE that was vacant at the time of a special session.

REP. COCCHIARELLA asked about the positions of administrative officer and executive director. MS. SCHMIDT said the administrative officer position is at a level comparable to other positions in the legislative branch, and MS. SCHMIDT is the lowest paid director.

REP. COCCHIARELLA WITHDREW the motion. She said the Council needs to make a commitment to the staff to advocate salaries that are equal with others in similar positions. She felt additional funds should be added.

REP. KNOX said he sympathized with REP. COCCHIARELLA's comments, but felt the Council should adopt the budget as proposed because of the time and thought that had been spent on it. He acknowledged the hard work of the staff, but said other members of the Legislature may not know about it. The political

reality is that there is a need to be careful about increases. He stressed that has nothing to do with his personal view of the abilities of the staff.

REP. COCCHIARELLA MOVED that the numbers in the salary category be increased from the \$10,000 to \$20,000 with part of the increase going to MS. SCHMIDT. The numbers would increase in FY 96 to \$208,469 and FY 97 to \$208,726.

The motion PASSED with SENATOR WELDON, REP. KNOX, REP. COCCHIARELLA, MR. NOBLE, SENATOR DOHERTY, SENATOR HERTEL, and SENATOR GROSFIELD voting yes. REP. ORR voted no.

Operating Plan Amendment

There was a reversion of approximately \$5,000 from the FY 94 budget. Rep. Cobb proposed a bill that was passed in the 1993 session that allowed agencies to take 30 percent of a reverted amount on a one-time basis as an incentive to reverting more money. MS. SCHMIDT asked that the Council grant approval to keep \$1,500 and apply it to FY 95 expenses. The funds would be used for salaries or for professional development and training.

SENATOR WELDON MOVED that \$1,553 be retained from the FY 94 reversion and placed in the FY 95 budget. The motion PASSED.

OTHER BUSINESS

BMP Audits

MR. SIHLER said the voluntary best management practices program and the audits of those practices that occur on an every-other-year cycle were the result of an EQC interim study from 1987 to 1989. As a result of this study, the EQC has monitored the program on BMPS and has received a report from the Forestry Division staff at DSL on those audits.

MR. SIHLER said he had attended some of the audits in August and September. The draft report should be ready in November and the Department of State Lands could give a presentation at that time.

MR. NOBLE said it is very important that the Council hear that information and to keep monitoring the program.

MR. SIHLER said he had heard that the overall results are continuing to improve. However, results on Forest Service lands apparently decreased a bit. Commercial lands had the highest ratings on the audits for the first time.

Future Meetings

SENATOR DOHERTY asked what was happening with REP. BIRD. MR. NOBLE said she had gone to Oklahoma to seminary and for all practical purposes was gone. SENATOR DOHERTY said if a legislator is gone out-of-state without permission for a period of 60 days, he/she is supposed to resign. The issue was unresolved.

MR. NOBLE said he had received information from Senator Gage about a company in Butte that is recycling waste water. He suggested that the Council have its next meeting in Butte and do a tour of the company.

Discussion of possible meetings dates proposed the dates of November 17 and 18. The Legislative Audit Committee meeting will be November 17 and the EQC has been invited to join it again to hear the presentation on the air quality and hard-rock audits. The tour in Butte could be held on Friday, the 18th.

Those dates were tentatively set for November 17 and 18.

The meeting adjourned at 4:40 p.m.